

REMARKS

Claims 1-26 are pending in this application. Claims 1-13 and 20-26 have been withdrawn from reconsideration.

In the Office Action, the Examiner objected to the drawings because the recited correcting unit and body composition computing unit are not shown in the drawings. A corrected drawing sheet for Fig. 8 has been submitted herewith, which is believed to fully address the Examiner's concerns. The corrections to Fig. 8 are fully supported, for example, at page 32, lines 3-11 of the present application, which paragraph has also been amended to reflect the changes to Fig. 8. No new matter has been added.

Claims 14-19 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite because it is alleged that essential structural cooperative elements are duplicated, such duplication amounting to "an indeterminate scope between the structural elements." This rejection is traversed, since it has no basis in the law, in fact, or in logic.

The Examiner objects to the recited "bioelectrical impedance computing unit," "correcting unit," and "body composition computing unit" of independent claim 14, because the specification discloses they can all be part of a single microprocessor. The Examiner therefore contends that they duplicate the microprocessor structure. Applicant disagrees.

The section of the MPEP cited by the Examiner in support of this rejection does not provide a legal basis for it. MPEP §2172.01 relates to unclaimed essential matter, and states that a claim which fails to interrelate essential elements of the invention may be rejected under §112, second paragraph, as indefinite. The Examiner does not allege that the computing and correcting units of claim 14 are not interrelated in the claim. In fact, they are properly interrelated as claimed. Rather, the Office Action contends that the recited elements *duplicate* structural cooperative elements. There is no discussion in §2172.01 relating to duplicative structural

elements. Therefore, MPEP §2172.01 does not support the Examiner's rejection. Moreover, there does not appear to be any other section of the MPEP that supports this rejection. Since there is no legal basis for the rejection under §112, second paragraph, it should be withdrawn.

Furthermore, the complained-of structural language of claim 14 is part of the original disclosure of the application, and it is fully supported, for example, at page 13, line 1 et seq.; page 32, lines 3-11; and page 33, line 17 et seq. of the present application; as well as in Figs. 8 and 9 of the application. The Applicant is therefore entitled to claim this structure. The specification's teaching of an arithmetic and control unit 23 having a single microcomputer or "CPU" that contains all three elements is only one possible embodiment of the claimed invention. There is no disclosure in the present application which would justify limiting the claimed invention to only that specific embodiment. Therefore, the Examiner has no basis for limiting the claims to only one embodiment.

Additionally, the word "microprocessor" used in the Office Action does not appear in the specification to describe the control unit 23; only the words "microcomputer" and "CPU." One skilled in the art would know that a microcomputer or CPU is not necessarily a microprocessor, although it could be. One skilled in the art would understand by reading the application that control unit 23 (and thus the claimed computing and correcting units) could be embodied, for example, in a single microprocessor, in two or more separate processor devices residing on a single circuit board, on two circuit boards electrically connected to each other, etc. The Examiner has no basis for interpreting the claim elements as being necessarily part of single microprocessor, or for forcing the Applicant to limit the claimed invention to a microprocessor.

Moreover, each of the three claimed computing and correcting units has a specific function which is clearly recited in the claim. Their recited functions do not overlap in any way. So even assuming, *arguendo*, that they were embodied in a single microprocessor, as contended

by the Office Action, there is no factual or logical basis for the contention that they duplicate a microprocessor structure. Rather, one skilled in the art would understand that each of their functions would most likely be performed by a different part of the microprocessor. Evidence of this can be seen, for example, in the flow chart of Fig. 9 of the present application, which shows steps S9-S11 (i.e., impedance measuring, impedance correction, and body composition calculation) as separate steps. The Examiner does not offer any support for the notion that a microprocessor structure is duplicated by the calculation and correction units of claim 14, so this contention is merely speculative, and cannot support a rejection under §112, second paragraph.

The rejection of claims 14-19 under §112, second paragraph, should therefore be withdrawn, and such action is respectfully solicited.

Claims 14-19 have been rejected under 35 U.S.C. § 102 (b) as being anticipated by US 2001/0007924 A1 (Kamada). This rejection is respectfully traversed. Applicant hereby requests reconsideration and allowance of the claims in view of the following arguments.

Regarding the rejection of independent claim 14, the Kamada reference does not disclose or even suggest the recited correcting unit that corrects a parameter value associated with the measured bioelectrical impedance by use of a parameter representing an intracellular/extracellular fluid ratio included in the parameter value of the bioelectrical impedance measured at a given frequency, or the body composition computing unit that computes an index associated with a body composition based on the corrected parameter value.

Despite contentions to the contrary in the Office Action, Kamada does not disclose or even suggest correcting a parameter value associated with a measured bioelectrical impedance. Nowhere does Kamada mention correction of a parameter associated with a measured bioelectrical impedance. Paragraphs 11 and 14 of Kamada, cited in the Office Action to show Kamada teaches computing a corrected parameter value, do not disclose or even suggest this at

all. Rather, paragraphs 11 and 14 of Kamada teach computing a parameter value representing a degree of restoration of a diseased body part based on impedance (paragraph 11), and then comparing the currently computed value with a stored previously measured value of the same parameter (or with a stored reference value), then displaying the result of the comparison (paragraph 14).

The Examiner seems to be analogizing Kamada's *comparing* of a present parameter value and a stored past parameter value (or a stored reference value), with the claimed invention's *correcting* of a computed parameter value. However, this is not a valid analogy. Comparing a past and a present parameter value to each other is not the same as correcting a parameter value, and the Examiner has no basis in logic or in fact for so contending. If the Examiner is contending the claimed correcting unit that corrects a calculated parameter value reads on Kamada's structure for comparing past and present parameter values, the Examiner's interpretation of the claim language is unreasonably broad, because it ignores the plain meaning of the claim term "corrects," without any basis therefore. In fact, the Examiner need only read the present application at page 33, line 17 et seq. to confirm that the claim term "corrects" is intended by Applicant to have its plain meaning, and not to mean "comparing" past and present parameter values as taught by Kamada.

Further, as explained at paragraphs 60-62 of Kamada, various body composition values, including an intracellular/extracellular water ratio, are calculated at step S15, stored at step 16, and displayed at step S17. No *correction* of any parameter is disclosed in these steps, or anywhere else in Kamada. An intracellular/extracellular fluid ratio is used by the claimed invention by the recited correcting unit to correct an impedance parameter value. However, Kamada does not disclose or suggest using this ratio to correct an impedance parameter value, as claimed. Kamada simply calculates it, and displays it in step S17 (see Fig. 2 of Kamada). In

other words, Kamada does not disclose an apparatus that uses the intracellular/extracellular fluid ratio as claimed.

Furthermore, since Kamada does not disclose the recited correcting unit for correcting a parameter value, it cannot disclose the recited computing unit of claim 14 that computes an index based on the corrected parameter value.

Kamada does not anticipate independent claim 14, because it does not disclose the recited correcting unit or body composition computing unit. Moreover, it would not have been obvious to modify the apparatus of Kamada to add these features to yield the invention of claim 14.

Consequently, claim 14 is patentable, as are claims 15-19, which depend from claim 14.

Further regarding dependent claims 17-19, Kamada does not teach correcting any parameters, so it cannot disclose the correcting unit of claim 17 which corrects any of the parameters listed in claim 17, or the correcting unit of claims 18-19 that corrects in accordance with the recited mathematical expressions. Consequently, claims 17-19 are further and separately patentable.

Accordingly, it is believed that all pending claims are now in condition for allowance. Applicant therefore respectfully requests an early and favorable reconsideration and allowance of this application. If there are any outstanding issues which might be resolved by an interview or an Examiner's amendment, the Examiner is invited to call Applicant's representative at the telephone number shown below.

Application No.: 10/787,197

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Michael A. Messina".

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